

In the Matter of License No. 194702 and all other Seaman Documents
Issued to: JOHN SAHLBERG

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1036

JOHN SAHLBERG

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 11 October 1957, Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents upon finding him guilty of negligence. Two specifications allege that while serving as Pilot on board the American SS ALCOA PILGRIM under authority of the document above described, on or about 18 December 1956, Appellant contributed to a collision between the ALCOA PILGRIM and the SS AFRICAN STAR, when the former was the burdened vessel in a crossing situation, by initiating a two-blast whistle signal (First Specification); and by failing to keep clear of the privileged AFRICAN STAR (Second Specification). The ship will be referred to as the PILGRIM and the STAR.

At the beginning of the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by counsel of his own choice and he entered a plea of not guilty to the charge and both specifications.

The Investigating Officer and Appellant's counsel made their opening statements. The record of the Coast Guard investigation of the collision was stipulated in evidence as the sole evidence before the Examiner.

At the conclusion of the hearing, the oral arguments of the Investigating Officer and Appellant's counsel were heard. After considering the evidence as well as the proposed findings and conclusions submitted on behalf of Appellant, the Examiner rendered his decision in which he concluded that the charge and two specifications had been proved. An order was entered suspending all documents, issued to Appellant, for a period of two months.

Notice of appeal was timely filed on 18 October and the supporting brief was submitted on 5 December 1957.

FINDINGS OF FACT

On 18 December 1956, Appellant was serving as Pilot on board the American SS ALCOA PILGRIM and acting under authority of his License No. 194702. On this date, his ship collided with the American SS AFRICAN STAR in the Main Ship Channel in the Upper Bay area of New York Harbor between Governor's Island and Ellis Island. The westerly boundary of the channel is the easterly boundary of an anchorage area. The easterly boundary of the channel is the westerly side of Governor's Island. The accident occurred at 1937 PILGRIM time (1939 STAR time) approximately 300 yards east of the westerly boundary of the half-mile wide Main Ship Channel, bearing 115 degrees true from buoy No.1 off Ellis Island at a distance of about 575 yards. (The depth of the water, in the anchorage area to the west of the channel at this point, decreases to less than 30 feet at all places which are 350 yards or more west of the scene of the casualty.) The bow of the PILGRIM, upbound in the Main Ship Channel, struck the STAR on her port side. There were no deaths or injuries to personnel on either vessel. Most of the estimated one-million-dollar damage was sustained by the STAR.

The PILGRIM is a C-1 type freighter of 6749 gross tons, 417 feet in length. At the time of the casualty, she was carrying a cargo of 8000 tons from Bush Terminal, Brooklyn to Weehawken, New Jersey with a draft of 25 feet, 10 inches forward, 28 feet aft. Appellant, who was the Master of the assisting tug E. F. MORAN, JR., boarded the PILGRIM at Bush Terminal and thereafter conned the ship until the time of the collision.

The STAR is a C-3 type freighter of 7971 gross tons, 496 feet in length. She was loaded with a 9000-ton cargo enroute from Boston to a Staten Island dock via Long Island Sound and the East River. Her draft was 22 feet, 8 inches forward and 29 feet, 10 inches aft. A Hell Gate Pilot boarded the ship at City Island, New York and was subsequently at the conn as the STAR proceeded through Hell Gate, down the East River and to the Main Ship Channel on the East River Deep Water Channel Range of 260 degrees true which runs between the Battery and Governor's Island. Her engines were set at full ahead maneuvering speed at 1929 (1927 PILGRIM time) against a 3-knot current.

The PILGRIM got underway at approximately 1910 from Bush Terminal, Brooklyn with Appellant at the conn and the tug E. F. MORAN, JR. on the starboard bow. At all times pertinent to the collision, weather conditions were favorable and no harbor traffic or other obstacles interfered with the maneuvering of the ship. Also on the bridge of the PILGRIM were the Master, the Night Mate and the helmsman. The PILGRIM was traveling with a 21/2 knot as she proceeded up Red Hook Channel and entered the Main Ship Channel at 1930 on a course of 020 degrees true after swinging in a wide

turn to the left and then to the right in order to avoid the shoals south of Governor's Island. At 1930, the PILGIRM passed off Liberty Island with buoy No. 31 (which marks the western edge of the channel) abeam to port at a distance of about 250 yards, released the tug and continued up the left side of the channel at full ahead maneuvering speed between Governor's Island on the east and Ellis and Liberty Islands on the west.

Shortly after the PILGIRM was steady on her course up the channel, Appellant observed the STAR proceeding out of the East River. The STAR was bearing about 4 points on the starboard bow of the PILGIRM at a distance of approximately one mile. Thereafter until the time of collision, the bearing remained fairly constant with the two range lights and the red side light of the STAR visible. After observing the westerly course of the vessel and concluding that she intended to proceed down the Main Ship Channel, Appellant proposed a starboard to starboard passing by sounding a 2-blast whistle signal at about 1934. There was no answer from the STAR whose Pilot was watching a C-2 vessel bound down the west side of the Main Ship Channel. When the C-2 crossed the bow of the STAR, the latter's Pilot remarked that he would follow the C-2 down the channel. The STAR continued on the same course of 260 degrees true.

Appellant sounded a second 2-blast signal. The STAR answered with the danger signal and a 3-blast signal. After a third 2-blast signal sounded by Appellant received the same danger and 3-blast signals in reply, Appellant ordered the engines of the PILGIRM stopped, then full astern as he sounded 3-blasts and the danger signal. At this time which was about 2 minutes before impact, Appellant also gave orders to let go both anchors. The port anchor was dropped approximately a minute prior to the collision at 1937. In the meanwhile, the STAR's engines were ordered full astern. Her anchors were dropped as the two ships came together on the west side of the Main Ship Channel. Both vessels were nearly stopped and on substantially their same courses as the bow of the PILGRIM penetrated the port side of the STAR in the vicinity of the engine room. The bow of the PILGRIM was intentionally kept in the side of the STAR for about 20 minutes. The PILGRIM then proceeded to her destination at Weehawken, New Jersey. The STAR was eventually beached in order to prevent her sinking.

Appellant has no prior disciplinary record with the Coast Guard.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that:

POINT I. It was reasonable for Appellant to propose a starboard to starboard passing to the STAR. The Examiner erred in concluding that this was a crossing situation. It was a meeting situation since the PILGIRM was upbound in the Main Ship Channel and the STAR was downbound in the same channel. The applicable rule is determined by the intended course of the vessel rather than her temporary headings. Appellant knew the STAR intended to proceed down the Main Ship Channel because, otherwise, she would have grounded in the anchorage area after crossing the bow of the PILGIRM and before being able to turn left down the channel. Since it would not have been safe for the PILGRIM to cross to the starboard side of the channel into the intended path of the STAR and no traffic would have interfered with a starboard to starboard passing, this was the only safe and practicable method of passage by the two ships. Cases are cited where the courts have rejected claims that the starboard hand rule applies when vessels are on meeting courses and both understand that a starboard to starboard passing is intended.

POINT II. The PILGIRM's navigation was reasonable under the circumstances. Although the courts have held that the narrow channel rule applies to the Main Ship Channel, vessels upbound on the westerly side of the channel have been exonerated after colliding with a downbound vessel on a parallel course which indicated a starboard to starboard passing situation. In such cases, the upbound vessel was clearly visible on the wrong side of the channel and did not impede the navigation of the other ship.

POINT III. The STAR's navigation was the cause of the collision. The testimony of the helmsman and lookout on the STAR shows that the full astern order, the sounding of the danger signal and the order to drop both anchors occurred just prior to the collision rather than 3 minutes before as stated by the Master and Pilot of the STAR. The version of the latter two is based on admitted alterations of entries in logbooks and on the STAR's chart.

It is submitted that, since the findings are not supported by the evidence and the decision is incorrect as a matter of law, the Examiners's decision should be reversed and the charges against Appellant dismissed.

Appearances: Messrs. Burlingham, Hupper and Kennedy of New York City by Adrian J. O'Kane and Richard W. Palmer, of Counsel

OPINION

It is my opinion that the facts set forth above make out a

crossing situation where it was the duty of the STAR, as the privileged vessel, to maintain her course and speed (33 U.S.C. 206) and the duty of the PILGRIM, as the burdened vessel, to keep out of the way of the vessel on her starboard side (33 U.S.C. 204).

POINT I

Appellant does not question the fact that two ships were clearly in the relative positions of vessels on crossing courses when they each sighted the lights of the other vessel at a distance of about one mile. But Appellant contends that this was a meeting situation because the STAR intended to turn to her left to go down the Main Ship Channel and the only safe maneuver to accomplish this was for the STAR to turn before crossing the bow of the PILGRIM. Hence, the claimed justification for the proposed starboard to starboard passing.

The distinction between the cases cited to uphold this proposition and the situation herein is that, in the former cases, the vessels were on meeting courses, or substantially so, when the risk of collision arose and the vessels involved understood that starboard to starboard passing were intended. This was not the understanding in this case. The STAR maintained her course and speed as the privileged vessel with the intention of crossing the bow of the PILGRIM before turning left to follow the C-2 down the west side of the Main Ship Channel. Although the PILGRIM was to her left of mid-channel, there would still have been some 350 yards of water, on the port side of the PILGRIM, which was deep enough for the STAR to make her turn to port despite her draft of about 30 feet aft. If the STAR had completed this intended maneuver, she would have been on her starboard side of the channel in compliance with the narrow channel rule (33 U.S.C. 210). It has been held that this rule applies to the Main Ship Channel between Governor's Island on the east and Bedloe's (now Liberty) and Ellis Islands on the west. The George F. Randolph (D.C.S.D.N.Y., 1912), 200 Fed. 96.

So far as the application of the starboard hand rule in narrow channels is concerned, the rule applies when the vessels are on crossing courses unless there is a clearly established custom for vessels to pass starboard to starboard. The Lexington (C.C.A. 2, 1935), 79 F. 2d 252. Even if such a custom is proved, it is a violation of the narrow channel rule if based merely on the convenience of vessels. The La France (C.C.A. 2, 1926), 12 F.2d 337. In any event, there was no proof of this custom in the record of the case under consideration.

In The Lexington, supra, it was held that even though the privileged vessels accepted a 2-blast signal from the burdened

vessel in a crossing situation in a narrow channel, the burdened vessel was solely at fault for the collision because she assumed the risk of the maneuver and the privileged vessel did her best to co-operate in this situation which had become one of special circumstances after the exchange of 2-blast signals. Here, there was no such agreement. In other related types of cases concerning collisions in channels, the courts have held that the starboard hand rule applies with another vessel (The Kingston (D.C., W.D. N.Y., 1909), 173 Fed. 992) as well as under other conditions when it is necessary to avoid speculation as to the intended course of the other vessel. The Ashley (C.C.A.2,1915), 221 Fed. 423. In fact, the latter case is good authority for the proposition that the STAR would have been justified in sounding a one-blast cross signal in answer to the PILGIRM's 2-blast signal proposing a departure from the rules.

The gist of the court decisions is that in all such doubtful cases as this one, the starboard hand rule is intended to eliminate just such speculation as was indulged in by Appellant as to the intended course of the STAR; two vessels on crossing courses in channels will necessarily pass each other on the port side if the burdened vessel keeps out of the way of the privileged vessel by avoiding crossing ahead (33 U.S.C. 207) and, if necessary, slackening speed, stopping or reversing (33 U.S.C. 208); and each vessel will pass closer to her respective starboard side of the channel than the other vessel when the starboard hand rule is observed.

POINT II

The above discussion largely disposes of Appellant's contention that the PILGIRM's navigation was reasonable under the circumstances. The cases cited to uphold the PILGRIM's right to continue navigating on her left side of the narrow channel are not appropriate because they represent instances where the vessels involved were on parallel meeting courses and therefore in position to pass starboard to starboard according to the rules. In this case, the vessel were on crossing courses and the STAR gave no indication that she intended to deviate from the course which she steadily maintained practically up to the point of collision which meant that she proceeded on the same course for more than a half mile after sighted by Appellant.

Rather than trying to predict what the STAR intended to do on the basis of what Appellant considered to be the safest course of action for both vessels, Appellant should have checked the speed of the PILGRIM in time to permit the privileged vessel to exercise her right to maintain her course and speed without interference from the burdened PILGRIM. If such action had been taken by Appellant

when the STAR was observed on a crossing course, Appellant would not have been faced later with the choice of directing his ship to starboard, which he did not think was safe, or insisting three times upon a starboard to starboard passing. It was not Appellant's responsibility to determine whether it was safe for the STAR to continue on her course toward the shallow anchorage area to the west of the channel. It was simply his duty to keep clear of the privileged vessel in a crossing situation.

POINT III

The sole purpose of this proceeding is to determine whether Appellant was negligent and, if so, whether his navigation of the PILGRIM contributed to the collision. There is no attempt herein to fix blame on the STAR or to exonerate her from fault. Since there is no claim that the STAR ever accepted the 2-blast proposal, it is immaterial to this case whether the STAR took timely action to avert the collision by ordering her engines astern and sounding the danger signal after danger of collision became imminent. The original conduct, which resulted in the precarious predicament of the two vessels was Appellant's negligent failure to comply with the Inland Rules of the Road. This undoubtedly contributed to the collision.

CONCLUSION

The First Specification was properly found proved in view of Appellant's repeated insistence upon proposing a departure from the rules by sounding three 2-blast whistle signals when his ship was the burdened vessel in a crossing situation.

The Second Specification is sustained by the evidence that Appellant failed in his duty to keep his ship clear of the privileged vessel in a crossing situation.

ORDER

The order of the Examiner dated at New York, New York, on 11 October 1957, is AFFIRMED.

J. A. Hirshfield
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 14th day of May 1958.